

Date _____ By _____

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
Panama City DIVISION

CIVIL RIGHTS COMPLAINT FORM
TO BE USED BY PRISONERS IN ACTIONS UNDER 42 U.S.C. § 1983

Ramon Armas Berroto JR.
Inmate # X27467
(Enter full name of Plaintiff)

vs.

CASE NO: 5:04cv165/RH/WCS
(To be assigned by Clerk)

Officer T. McDonald
Officer Pate
Officer Spate
Sergeant McKenzie

(Enter name and title of each Defendant.
If additional space is required, use the
blank area below and directly to the right.)

ANSWER ALL QUESTIONS ON THE FOLLOWING PAGES:

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
PANAMA CITY, FLA.

04 JUL 19 2004

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FILED

I. PLAINTIFF:

State your full name, inmate number (if applicable), and full mailing address in the lines below.

Name of Plaintiff: Ramon Armas Borecto Jr.
 Inmate Number: X 27467
 Prison or Jail: Florida State Prison C-1304
 Mailing address: 7819 N.W. 22 8th St.
Rayford, FL 32026

II. DEFENDANT(S):

State the name of the Defendant in the first line, official position in the second line, place of employment in the third line, and mailing address. Do the same for every Defendant:

- | | |
|--|---|
| <p>(1) Defendant's name: <u>T. McDonald</u>
 Official position: <u>officer</u>
 Employed at: <u>Washington C.I.</u>
 Mailing address: <u>4455 Sam Mitchell Dr.</u>
 <u>Chipley, FL 32428</u></p> | <p>(4) <u>McKenzie</u>
 <u>Sergeant</u>
 <u>Washington C.I.</u>
 <u>4455 Sam Mitchell Dr.</u>
 <u>Chipley, FL 32428</u></p> |
| <p>(2) Defendant's name: <u>Pate</u>
 Official position: <u>officer</u>
 Employed at: <u>Washington C.I.</u>
 Mailing address: <u>4455 Sam Mitchell Dr.</u>
 <u>Chipley, FL 32428</u></p> | |
| <p>(3) Defendant's name: <u>Spate</u>
 Official position: <u>officer</u>
 Employed at: <u>Washington C.I.</u>
 Mailing address: <u>4455 Sam Mitchell Dr.</u>
 <u>Chipley, FL 32428</u></p> | |

ATTACH ADDITIONAL PAGES HERE TO NAME ADDITIONAL DEFENDANTS

NOTE: THE COURT WILL NOT REVIEW THE MERITS OF THE COMPLAINT UNLESS THE FOLLOWING QUESTIONS HAVE BEEN ANSWERED REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ANY PRIOR LAWSUITS THAT HAVE BEEN FILED.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Exhaustion of administrative remedies is required prior to pursuing a civil rights action regarding conditions or events in any prison, jail, or detention center. 42 U.S.C. § 1997e(a). Plaintiff must submit copies of all grievances, appeals, and responses with this complaint to verify exhaustion. Failure to demonstrate exhaustion may be grounds for dismissal.

A. DOES YOUR COMPLAINT CONCERN EVENTS OCCURRING WITHIN THE FLORIDA DEPARTMENT OF CORRECTIONS?

Yes(☒)

No(☐)

[If your answer is NO, proceed to Question B. If your answer is YES, answer all of the following questions in this subsection.]

1. Informal Grievance

a. Did you submit an informal grievance?

Yes(☐)

No(☒)

❖ If so, you must attach a copy of the grievance and response; exhibit N/A.

b. If not, why? I filed an Emergency Grievance directly to Tallahassee.

2. Formal Grievance

a. Did you submit a formal grievance?

Yes(☐)

No(☒)

❖ If so, you must attach a copy of the grievance and response; exhibit N/A.

b. If not, why? Emergency Grievance directly to Tallahassee.

3. Appeal to the Office of the Secretary

a. Did you submit an appeal to the Office of the Secretary?

Yes(☒)

No(☐)

❖ If so, you must attach a copy of the appeal and response; exhibit A. 3 B

b. If not, why? Attached is a Request trying to locate the grievance. I've written about 6 request. Santa Rosa doesn't want to give me a copy of the grievance and said for the court to request it. I've attached the receipt verifying the grievance as Exhibit A 3, the request as Exhibit B.

4. Disciplinary Actions

- a. Did you have a disciplinary hearing concerning this matter?

Yes() No(~~X~~)

❖ If so, you must attach a copy of the disciplinary report and disciplinary hearing team's findings and decision to this form; exhibit N/A.

- b. Did you lose gaintime as a result of the disciplinary hearing?

Yes() No(~~X~~)

- c. Has the gaintime since been restored?

Yes() No(~~X~~)

B. DOES YOUR COMPLAINT CONCERN EVENTS OCCURRING WITHIN A COUNTY JAIL OR DETENTION CENTER?

Yes() No(~~X~~)

[If your answer is NO, proceed to Section IV of the complaint form.
If your answer is YES, answer the following questions.]

1. Is there a grievance procedure at your institution or jail?

Yes() N/A No()

[If your answer is NO, proceed to Section IV of the complaint form. If your answer is YES, answer all of the following questions in this subsection.]

2. Did you submit a grievance concerning the facts relating to your complaint?

Yes() N/A No()

3. If your answer is YES: N/A

a. What steps did you take? N/A

b. What were the results? N/A

❖ If so, you must attach a copy of the grievance and response; exhibit N/A.

4. If your answer is NO, explain why not: N/A
-

NOTE: FAILURE TO DISCLOSE **ALL** PRIOR CIVIL CASES MAY RESULT IN THE DISMISSAL OF THIS CASE. IF YOU ARE UNSURE OF ANY PRIOR CASES YOU HAVE FILED, THAT FACT MUST BE DISCLOSED AS WELL.

IV. PREVIOUS LAWSUITS

- A. Have you initiated other actions in **state court** dealing with the same or similar facts/issues involved in this action?

Yes() No(☒)

1. Parties to previous action:

a. Plaintiff(s): N/A

b. Defendant(s): N/A

2. County and judicial circuit: N/A

3. Name of judge: N/A

4. Approximate filing date: N/A

5. If not still pending, date of dismissal: N/A

6. Reason for dismissal: N/A

7. Facts and claims of case: N/A

(Attach additional pages as necessary to list state court cases.)

- B. Have you initiated other actions in **federal court** dealing with the same or similar facts/issues involved in this action?

Yes() No(☒)

1. Parties to previous action:

a. Plaintiff(s): N/A

b. Defendant(s): N/A

2. District and judicial division: N/A

3. Name of judge: N/A

4. Approximate filing date: N/A

5. If not still pending, date of dismissal: N/A

6. Reason for dismissal: N/A

7. Facts and claims of case: N/A

(Attach additional pages as necessary to list other federal court cases.)

- C. Have you initiated other actions (*besides those listed above in Questions (A) and (B)*) in **either state or federal court** that relate to the fact or manner of your incarceration (including habeas corpus petitions) or the conditions of your confinement (including civil rights complaints about any aspect of prison life, whether it be general circumstances or a particular episode, and whether it involved excessive force or some other wrong)?

Yes()

No(☒)

If YES, describe each action in the space provided below. If more than one action, describe all additional cases on a separate piece of paper, using the same format as below.

1. Parties to previous action:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A
4. Approximate filing date: N/A
5. If not still pending, date of dismissal: N/A
6. Reason for dismissal: N/A
7. Facts and claims of case: N/A

(Attach additional pages as necessary to list cases.)

- D. Have you ever had any actions in **federal court** dismissed as frivolous, malicious, failing to state a claim, or prior to service? If so, identify each and every case so dismissed:

Yes()

No(☒)

1. Parties to previous action:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A Case Docket # N/A
4. Approximate filing date: N/A Dismissal date: N/A
5. Reason for dismissal: N/A

(Attach additional pages as necessary to list cases.)

V. STATEMENT OF FACTS:

Using numbered paragraphs, state as briefly as possible the **FACTS** of your case. Describe how each defendant was involved and what each did or did not do to give rise to your claim. Include the names of persons involved, dates, times, and places. State exactly what happened. **DO NOT make any legal arguments or cite any cases or statutes.** You may make copies of these pages and attach additional sheets of paper if needed:

(RB) On 11/28/02 At Approximately 8:30 AM. I WAS placed in handcuffs and taken out cell G4-101 where I Resided on C.M. status. I was taken out by Officer McDonald & Officer Pate. I was taken to the room where they have D.R. court & As the Officers refer to it, "the room with no cameras." Inside this room were also Officer Spate, Nurse Kent, and Sergeant McKenzie. Off. Pate stood in front of the window so no one could witness the incident other than those inside the room. I stood handcuffed with my hands behind my back close to the wall. Off. McDonald then proceeded to punch me with his left fist in my abdominal area. He punched me about 6 or 7 times there. Then he pushed my head down and punched me with his right hand in the back of my head about 3 or 4 times, and hit me once on my left ear. Last he placed my head between his legs and grabbed me around my waist and picked me off the ground & dropped me on my head. Nurse Kent then said, "stop, stop," & Sgt. McKenzie said, "OK. That's enough." Sgt. McKenzie grabbed my right arm (RB) and lifted me back to my feet. I was then taken back to my cell where the handcuffs were removed. My ear turned black from one of Off. McDonald's punches (RB). Inmates David Blake Brooks & Ronald Cain 736165 ARE just 2 of the inmate who can verify my ear

V. STATEMENT OF FACTS:

State briefly the FACTS of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. (If there are facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

being black. At approximately 6:30 P.M. on 11/28/02 I tried to declare a staff Assault which was denied by Sergeant English. His Reason being "the captain already left for the night". I declared a staff Assault at 11:PM & was finally given the opportunity make a statement & be seen by the nurse. A ^{RB} ~~male~~ male (John Doe) Nurse checked me but refused to take pictures of my ear. I filled out an affidavit before a white male, white haired, John Doe Captain. I also wrote an Emergency Grievance on this incident which was suppose to go directly to Tallahassee. On 12/2/02 I was threatened by Sgt. McKenzie, Off. Spate, & Lt. Copeland to ^{RB} "keep quiet" about it. I cut my wrist so I could be moved from the dorm because of the fear I was in. While I was in the SCs cell a white male overweight John Doe Captain came to see me ^{RB} with my Emergency grievance which was suppose to the Secretary in his hand. He was accompanied by a white female Jane Doe Nurse. She verified that my bruised ear was caused by a punch. I never receive a response to my grievance only the receipt. On 12/19/02 Inspector Kraus from the I. G.'s office immediately transferred me to Santa Rosa C.I. after interviewing me. I wrote a second grievance concerning this Assault in January which was also never answered. Also when I declared the staff Assault at 11:PM on 11/28/02 I was not seen immediately. At approx. 1:AM on 11/29/02 All the Spanish inmate's & a few blacks began kicking the door & then I was finally seen ^{RB} at approximately 1:30 AM. The Inspector General never advised me of the disposition of the investigation. ^{RB} There was no reason for me to have been taken to that room in the first place. I have attempted numerous times to obtain my medical records, to no avail. So I have attached a ^{RB} medical release form so you may obtain my medical record concerning this abuse.

VI. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section V. If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.

- ① Ofc McDonald violated my 8th Amendment "Freedom from Cruel and Unusual Punishment" also My 4th Amendment "Freedom from Assault." He violated these Constitutional Rights by committing the Act of "Assault and Battery" against my person and punishing me in a cruel and unusual manner. ② Ofc. Pate, Ofc. Spate, and Sgt. McKenzie violated my 8th Amendment as well due to their deliberate indifference to their duty to protect my person from such assaults and punishments.

VII. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes.

- ① I seek compensatory damages & punitive damages & that Officer McDonald be fired & the rest be reprimanded. I'm suing all the defendants both in their individual capacities & official ~~cap~~ capacities. Also I seek any other relief to which I'm entitled to in this action which the Court deems proper due to the circumstances of the case.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT, INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

6/3/04
(Date)

R B S
(Signature of Plaintiff)

IF MAILED BY PRISONER:

I declare (or certify, verify, or affirm) under penalty of perjury that this complaint was (check one):
☒ delivered to prison officials for mailing or ☐ deposited in the prison's internal mail system on:
the 14th day of July, 2004.

R B S
(Signature of Plaintiff)

Revised 07/02

LEGAL MAIL
PROVIDED TO
FLORIDA STATE PRISON
DATE 7/14/04 FOR MAILING
INMATES INITIALS RB

RETURN TO:

LAST FIRST MIDDLE INITIAL
BORRUTO RAMON

NUMBER
X27467

INSTITUTION
WASHINGTON C.I.

INSTITUTION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT

5DISCIPLINE

DATE
12/3/02

GRIEVANCE LOG NUMBER
02-12025

RECIPIENT'S SIGNATURE (STAFF MEMBER)
L. LYKINS

DISTRIBUTION:

- WHITE COPY
- CANARY COPY
- PINK COPY
- GOLDENROD COPY

INSTITUTION/FACILITY

- INMATE COPY
- INMATE'S FILE
- INMATE COPY
- RETAINED BY OFFICIAL RESPONDING

DISTRIBUTION:

- WHITE COPY
- CANARY COPY
- PINK COPY
- GOLDENROD COPY

CENTRAL OFFICE

- INMATE COPY
- INMATE'S FILE - INST./FACILITY
- C.O. INMATE FILE
- RETAINED BY OFFICIAL RESPONDING

DC1-303 (Revised 8-00)

EXHIBIT A

B21215

INMATE REQUESTSTATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

(Instructions on Back)

Mail Number: _____

Team Number: _____

Institution: _____

TO:
(Check One)☐ Warden
☐ Asst. Warden☐ Classification
☐ Security☐ Medical
☐ Dental☒ Other

MR. Castle

FROM:	Inmate Name Ramon Borruto	DC Number X27467	Quarters G-1219-L	Job Assignment	Date 9/19/03
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REQUEST

- ① I need you to please have trace grievance log number 02-12025 at Washington C.I. on date 12/3/02 it was filed signed by L. Lykins. I have the receipt.
- ② I also need you to check the computer here on the following grievances to see if any are have something to do with a staff assault which occurred at Washington C.I. Log # 03-602030 dated 1-17-03 signed by Ms. Blocker; Log # 03605053 dated 2-27-03; This receipt doesn't have a log # only says MR03-00179 signed by Ms. Blocker; Log # 03604832 dated 2-14-03 signed by Ms. Blocker; 3 the last one again only has MR03-00196 dated 2-26-03 by Mrs. Italian.
- ③ I know I filed an emergency grievance on a staff assault but I think I wrote Washington where it says "Institution" instead of Santa Rosa Thank you for your help. I wrote it around January.

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

DO NOT WRITE BELOW THIS LINE**RESPONSE**

DATE RECEIVED: _____

[The following pertains to informal grievances only:	
Based on the above information, your grievance is <u>NA</u> (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]	
Official (Signature): R. Castle	Date: 9/22/2003

Distribution: White -Returned to Inmate
Canary -Returned to Inmate

Pink -Retained by official responding, or if the response is to an informal grievance then forward to be placed in inmate's file.